

REMARKS

Applicants have studied the Office Action dated August 25, 2004. It is submitted that the application, as amended, is in condition for allowance. Claims 1-18 are pending. Claims 1, 4, 5, 6, 8, 9, 10, 12, 14, 16, 17, and 18 have been amended. Reconsideration and allowance of the pending claims in view of the above amendments and the following remarks is respectfully requested.

In the Office Action, the Examiner:

- Requested the Applicants' cooperation in correcting any errors in the specification;
- Rejected claims 1, 6, 8, 10, 12, 14, 16, and 18 under 35 USC §112, Second Paragraph as being indefinite;
- Rejected claims 1-5 and 10-13 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 and 9-12 of U.S. Patent No. 6,611, 812;
- Rejected claims 1-5, and 10-13 under 35 U.S.C. § 102(e) as being anticipated by Rusnak et al. (U.S. Patent No. 6,098,056);
- Rejected claims 6-9 and 14-18 under 35 U.S.C. § 103(a) as being unpatentable over Rusnak et al. (U.S. Patent No. 6,098,056) in view of Shear et al. (U.S. 2001/00442043); and
- Indicated Claims 4 and 12 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Abstract

As noted above, the Examiner Requested the Applicants' cooperation in correcting any errors in the specification. The Abstract has been corrected to comply with 37 CFR §1.72. No new matter has been added.

Rejection under 35 U.S.C. § 112, Second Paragraph

As noted above, the Examiner rejected claims 1, 6, 8, 10, 12, 14, 16, and 18 under 35 USC §112, Second Paragraph as being indefinite. The Applicants have carefully amended the claims. Accordingly, the Applicants respectfully submit that the Examiner's rejection has been overcome and should be withdrawn.

Rejection Under Judicially Created Doctrine Of Obviousness-Type Double Patenting

As noted above, the Examiner rejected claims 1-5 and 10-13 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 and 9-12 of U.S. Patent No. 6,611, 812. A terminal disclaimer is submitted herewith. Accordingly, with the submitted terminal disclaimer, the Examiner is respectfully requested to withdraw the rejection the judicially created doctrine of obviousness-type double patenting.

Rejection under 35 U.S.C. § 102(e) Rusnak et al.

As noted above, the Examiner rejected claims 1-5, and 10-13 under 35 U.S.C. § 102(e) as being anticipated by Rusnak et al. (U.S. Patent No. 6,098,056). Applicants submit that under 35 U.S.C. § 103 (c), the subject matter of Rusnak et al. (U.S. Patent No. 6,098,056) cited by Examiner and of the presently claimed invention was commonly owned at the time the claimed invention was made, and that this effectively disqualifies the cited reference as prior art under 35 U.S.C. § 103 (c) for purposes of an obviousness rejection. See also MPEP § 706.02 (I) (3), which specifically directs Examiners check the assignment records to determine common ownership. Note that the cited reference Rusnak and the subject matter of the presently claimed invention have been, and are currently, assigned to the same common owner, i.e., International Business Machines Corporation. Also note that the date of the Rusnak reference is August 1, 2000, while the file date of the present patent application is November 12, 2000. The Rusnak reference, accordingly, is being cited under 35 U.S.C. § 102(e)/103(a) for an obviousness rejection. Therefore, on this rejection basis

discussed above, Applicants submit that the subject matter of the Rusnak reference should be disqualified from relevant prior art under 35 U.S.C. § 102(e)/103(a) for purposes of an obviousness rejection. Accordingly, the rejection under 35 U.S.C. § 102(e)/103(a) as being unpatentable over Rusnak has been overcome and the Examiner's rejection should be withdrawn.

Rejection under 35 U.S.C. § 103(a) Rusnak in view of Shear

As noted above, the Examiner rejected claims 6-9 and 14-18 under 35 U.S.C. § 103(a) as being unpatentable over Rusnak et al. (U.S. Patent No. 6,098,056) in view of Shear et al. (U.S. 2001/00442043). As noted above, in the section entitled "Rejection under 35 U.S.C. § 102(e) Rusnak et al.," the Rusnak reference along with the subject matter of the presently claimed invention have been and are currently assigned to the same common owner, i.e., International Business Machines Corporation. Therefore, Rusnak is disqualified as prior art. Accordingly, the rejection under 35 U.S.C. § 103(a) as being unpatentable over Rusnak in view of Shear has been overcome and the Examiner's rejection should be withdrawn.

Allowable Subject Matter

The Applicants wish to thank Examiner Nobahar for indicating claims 4 and 12 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 4 and 12 have been rewritten in independent form including all the limitations of the base claim and any intervening claims. The Applicants submit that claims 4 and 12 are now in a condition of allowance, which allowance is respectfully requested.

Further claims 5 and 13, depend from newly amended independent claims 4 and 12, respectively. Since dependent claims contain all the limitations of the independent claims, claims 5 and 13 should be allowable as well, which allowance is respectfully requested.

CONCLUSION

The remaining cited references have been reviewed and are not believed to affect the patentability of the claims as amended.

In this Response, Applicants have amended certain claims. In light of the Office Action, Applicants believe these amendments serve a useful clarification purpose, and are desirable for clarification purposes, independent of patentability. Accordingly, Applicants respectfully submit that the claim amendments do not limit the range of any permissible equivalents.

Applicants acknowledge the continuing duty of candor and good faith to disclosure of information known to be material to the examination of this application. In accordance with 37 CFR §1.56, all such information is dutifully made of record. The foreseeable equivalents of any territory surrendered by amendment are limited to the territory taught by the information of record. No other territory afforded by the doctrine of equivalents is knowingly surrendered and everything else is unforeseeable at the time of this amendment by the Applicants and their attorneys.

Applicants respectfully submit that all of the grounds for rejection stated in the Examiner's Office Action have been overcome, and that all claims in the application are allowable. No new matter has been added. It is believed that the application is now in condition for allowance, which allowance is respectfully requested.

It is believed that no fee is due with this Amendment. However, if any fees are due, the Commissioner is hereby authorized to charge any fees that may be required or credit any overpayment to Deposit Account 09-0460.

PLEASE CALL the undersigned if that would expedite the prosecution of this application.

Respectfully submitted,

Date: November 24, 2004

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